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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 CORNELL EUGENE WILSON, Jr.,

12 Petitioner,

13 v.

14 PAUL THOMPSON,

15 Respondent.
16

No. 2:21-cv-0793 KJN P

ORDER

17 Petitioner is a federal prisoner, proceeding pro se, with an application for a writ of habeas
18 corpus pursuant to 28 U.S.C. § 2241. On November 5, 2021, petitioner filed a motion for a
19 merits ruling on his petition, arguing that respondent failed to file a timely response. As
20 discussed below, petitioner's motion is denied.

21 Background

22 On August 25, 2021, the undersigned ordered respondent to file a responsive pleading
23 within sixty days. Because the deadline ran on October 24, 2021, a Sunday, the response was due
24 on or before October 25, 2021. Respondent did not file the motion to dismiss and response until
25 November 5, 2021, eleven days later. (ECF No. 10.) On November 8, 2021, petitioner's motion
26 for a merits ruling, signed on November 1, 2021, was entered on the court docket. (ECF No. 12.)

27 In the motion to dismiss, respondent's counsel acknowledged the filing was late, but
28 argued it was due to limits caused by the Covid-19 pandemic, petitioner's multiple filings in this

district as well as his amendment in this action, and counsel's excusable neglect.¹ (ECF No. 10 at 1 n.1.)

Governing Authorities

Title 28 U.S.C. § 2241(c)(3) provides that the writ of habeas shall not extend to a prisoner unless he is in custody in violation of the Constitution, laws, or treaties of the United States. Section 2243 provides that the Court shall summarily hear and determine the facts and dispose of the matter as law and justice require. *Id.* It is well established that it is the petitioner's burden to show that he is in custody in violation of the laws of the United States. *Miller-El v. Cockrell*, 537 U.S. 322, 358 n.3 (2003). The failure of respondent to comply in a timely manner with a deadline set by the court does not relieve petitioner of the burden of proof or entitle him to entry of a default or a default judgment. *Gordon v. Duran*, 895 F.2d 610, 612 (9th Cir. 1990); *see also* *Bleitner v. Welborn*, 15 F.3d 652, 653 (7th Cir. 1994) (no entitlement to default judgment because of an untimely response); *United States ex rel. Mattox v. Scott*, 507 F.2d 919, 924 (7th Cir. 1974) (late filing of a motion to dismiss did not entitle a petitioner to entry of default); *Bermudez v. Reid*, 733 F.2d 18, 21 (2nd Cir. 1984) (late filing of an answer did not justify default judgment).

Discussion

Based on the authorities discussed above, the undersigned declines to construe petitioner's motion as a request for entry of default inasmuch as such relief is not available in habeas cases. While respondent should have sought an extension of time, or sought leave to file the belated motion to dismiss and response, this court has the inherent power to control its docket and the disposition of its cases with economy of time and effort for both the court and the parties. *Landis v. North American Co.*, 299 U.S. 248, 254-255 (1936); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). Respondent's filing of the motion to dismiss was appropriate and authorized by the August 25, 2021 order, and by Rule 4 of the Rules Governing Section 2254 Cases in the

¹ Court records confirm that petitioner has filed three habeas petitions in this district: *Wilson v. Thompson*, No. 2:20-cv-1294 JAM KJN; *Wilson v. Thompson*, No. 21-cv-0684 EFB; and the instant action.

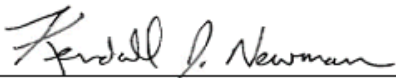
1 District Courts. Rule 4, Advisory Committee Notes, 1976 Adoption and 2004 Amendments.
2 Therefore, petitioner's motion for ruling on the merits is denied at this time; rather, petitioner
3 must file an opposition to the motion to dismiss and response.

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. Petitioner's motion for a decision on the merits (ECF No. 12) is denied without
6 prejudice; and

7 2. Petitioner shall file an opposition to respondent's motion to dismiss and response
8 within thirty days from the date of this order.

9 Dated: November 12, 2021

10 
11 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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